

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 29, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1120-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DARNELL JACKSON,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County:
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Darnell Jackson appeals from an order denying his motion for additional sentence credit. For the reasons set forth below, we affirm.

BACKGROUND

Sometime before January 3, 1992, Jackson was in custody awaiting sentencing for a crime unrelated to this appeal (first crime). On January 3, 1994, Jackson committed battery to a prisoner (second crime). The second crime underlies this appeal.

Sixteen days after committing the second crime, Jackson was sentenced to thirty years' imprisonment for the first crime. Thereafter, an additional 209 days passed before he was sentenced to four years, consecutive, for the second crime.

The first sixteen-day period is distinguished from the second 209-day period because during the sixteen days, Jackson was in presentence custody; no sentence had yet been imposed on either the first or the second crime. By contrast, during the remaining 209 days before the consecutive four-year sentence was imposed for the second crime, Jackson was already serving a thirty-year sentence for the first crime.

The sentence for the first crime included credit for the sixteen days Jackson was in presentence custody for both the first and the second crime. The sentence for the second crime did not include any credit for the 209 days Jackson spent in custody between sentence for the first crime and sentence for the second crime. Jackson appeals, arguing that he is entitled to 227 days credit.¹

¹ However, sixteen days plus 209 days only totals 225 days.

ANALYSIS

The Sixteen Days

State v. Boettcher, 144 Wis.2d 86, 423 N.W.2d 533 (1988), forbids dual sentence credit where, as here, consecutive sentences are imposed. Thus, Jackson got all the credit he was due when he received credit on his first sentence for the sixteen days he spent in presentence custody for both crimes.

Jackson attempts to distinguish *Boettcher*. He argues that Boettcher was in custody on a probation violation when the second sentence was imposed, but that he (Jackson) was in custody awaiting sentencing. However, Jackson does not satisfactorily explain why sentence credit should differ depending on whether a person is in probation violation custody or in presentence custody. Indeed, he acknowledges that under a straightforward application, the circuit court did not err in refusing double sentence credit for the sixteen days.

The 209 Days

Jackson also asks that he receive credit for the 209 days. Under *State v. Beets*, 124 Wis.2d 372, 369 N.W.2d 382 (1985), no sentence credit may be granted on a new sentence for time spent actually serving a sentence relating to a different crime. The State cited *Beets* to Jackson but he has not explained why this decision does not control the result in this case.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.